IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10370 of 1999

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VITTHALBHAI HIRABHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 10 - Respondent(s)

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Appearance :
MR AJ PATEL FOR MR JAYESH M PATEL for Petitioner No.1,
MS NISHA PARIKH AGP for Respondent No.1,
NONE for Respondent Nos.2,7 to 11.
MR MEHUL S SHAH for Respondent Nos.3 to 6.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 18/04/2007

ORAL JUDGMENT

1. Heard Mr.A.J. Patel, learned counsel for the petitioner, Ms.Nisha Parikh, learned counsel for the respondent No.1 – State and Mr.Mehul S. Shah, learned counsel for the respondent Nos.3 to 6. None for the respondent Nos.2 and 7 to 11.

2. The petitioner, being aggrieved by the order dtd.30/9/1999 passed by the Prant Officer, Gandhinagar in Fragmentation Case No.94 of 1990, declaring transaction dtd.14/7/1992 to be void being in violation of sections 7 and 8 of Fragmentation and Consolidation of Holdings Act, 1947 (“Fragmentation Act” for short) and order dtd.21/9/1999 passed by the Dy.Secretary on 23/7/1999 in SRD/CON/Gandhinagar/6/97 confirming order passed by the Prant Officer, is before this Court submitting inter-alia that the notice dtd.11/7/19996issued by the Prant Officer was patently illegal and that authorities have not taken into consideration the effect of the consolidation proceedings.

3. Short facts necessary for disposal of the present writ application are that the petitioner purchased land in dispute under sale deed dtd.14/7/1992 without prior permission of the authority. Mutation Entry No.2128 was effected in the records of right on 20/7/1992 and was certified on 21/4/1993. After receiving information about creation of fragments and illegal transaction, the Prant Officer issued notice dtd.11/7/1996 under sec.9 of the Fragmentation Act alleging inter-alia that provisions of

Secs.7 and 8 of the Act were violated by the petitioner – purchaser and erstwhile owner / vendor of the property. The petitioner submitted his reply on 23/7/1996. It is worth noting that question of consolidation, finalisation of the consolidation scheme, consolidation of land, allotment of a particular consolidated land or a block in favour of erstwhile owner, were not raised in reply to the notice to show cause. It was only submitted that the provisions of sec.7(1) of the Fragmentation Act would not apply if a fragment is sought to be transferred to the contiguous owner of the agricultural land or when the land is a complete block.

4. The Prant Officer, after giving due opportunity of hearing to the petitioner, held that as the Block was less than the standard area as fixed under the provisions of the Fragmentation Act, the transfer was illegal and consequently, the sale was void. The petitioner challenged the said order before the State Government and raised identical plea but, however, did not produce any record relating to consolidation etc. His submission all through out had been that the land in dispute being Block No.133 was a complete block, the provisions of

sec.7 or sec.8 of the Fragmentation Act would not apply, the revisional authority rejected the challenge to the order and dismissed the revision petition. The petitioner is now before this Court.

5. Mr.A.J. Patel, learned counsel for the petitioner, after taking me through the Annexures appended with the writ application and pleadings raised in para 2 of the writ application, submitted that Block No.133 came to be constituted after consolidation proceedings and once a Block is created under the consolidation proceedings, provisions of sec.7/8 of the Fragmentation Act would not apply. His submission is that the entry contained in Annexure-A would also show that after undergoing consolidation proceedings, Block No.133 was created and the area was 1 Acre and 16 Gunthas. He admits that in Annexure-A, Block No.133-Kh admeasuring 1 Acre and 16 Gunthas is shown as fragment. His submission is that after consolidation proceedings are over, secs.7 and 8 would not apply and otherwise also, proceedings could not be taken against the interest of the petitioner after such a long lapse of time.

6. Ms.Nisha Parikh, learned Assistant Government Pleader

for the respondent No.1 – State and Mr.Mehul Shah, learned counsel for the respondent Nos.3 to 6, on the other hand submit that if these factual aspects were not pleaded and appropriate evidence either oral or documentary was not produced before the Prant Officer or Dy.Secretary, then, at this stage, in proceedings under Article 227 of the Constitution of India, such questions cannot be permitted to be raised.

7. Mr.Shah, learned counsel for the respondent Nos.3 to 6 submits that a notice under sec.9 of the Act was issued to the petitioner and sub-section(1) of sec.9 would clearly show that nobody is permitted to violate any provision of law. According to Mr.Shah, any violation under sec.31 would also fall under sec.9, therefore, notice was valid and if it *prima facie* appears that notice was issued under sec.9, then, the authority even without referring to the provisions contained in sec.31 could pass an order under sec.31 of the Act.

8. Mr.Patel, learned counsel for the petitioner submits that present is a case where the petitioner is likely to suffer because of low understanding of the person who assisted the petitioner before the Prant Officer or Dy.Secretary.

His submission is that mufsil pleadings should not seal the fate of the party and in the present set of the circumstances, this Court either should take additional evidence on record or in the alternative, remand the matter to the learned Prant Officer for proceeding afresh, after giving due opportunity of leading evidence and raising further pleadings to the petitioner. He, however, concedes and gives an assurance to this Court that if an order of remand is made in favour of the petitioner, then, the question of limitation which has been raised in these proceedings, would not be raised by the petitioner and if the Prant Officer converts these proceedings into proceedings under sec.31 also, then too, the petitioner would not challenge the jurisdiction of the Prant Officer and would only contest the matter on merits.

9. Mr.Shah, learned counsel for the respondent Nos.3 to 6, however, submits that such concessions when are made by the learned counsel for the petitioner, would have no value.

10. Mr.Patel, learned counsel for the petitioner submits that these concessions are made by him after taking instructions from his client – petitioner who is present in

the Court.

11. Taking into consideration the totality of the circumstances and that the petitioner is raising plea of consolidation of the holdings, allotment of particular land as a Block, that in a case of consolidation of the holdings, provisions of secs.7 and 8 would not apply and that no specific notice was issued under sec.31 of the Act, I am of the opinion that the petitioner deserves an opportunity to raise further pleadings and lead evidence in response to the notice.

12. The impugned orders passed by the Prant Officer and confirmed by the Dy.Secretary are hereby quashed and set aside. The matter is remanded to Prant Officer for decision afresh in accordance with law. It is, however, made clear that the Prant Officer would be entitled to convert the proceedings under sec.31 of the Fragmentation Act, meaning thereby that he would be entitled to take proceedings under secs.7, 8 and/or 31 of the Fragmentation Act. The petitioner, in accordance with the undertaking given by him through his counsel Mr.A.J. Patel would not be entitled to challenge the conversion of the proceedings or addition of sec.31 of the

Fragmentation Act and would also not be allowed to raise question of limitation in issuing the notices.

13.The petitioner would be entitled to a further notice in relation to conversion of the proceedings or addition of sec.31 of the Fragmentation Act, he would be entitled to file his reply or raise additional pleadings and would also be entitled to lead any additional documentary or oral evidence. Barring the questions on which concession has been made by the petitioner through his counsel Mr.A.J. Patel, other defence would be available under the law to the petitioner.

14.The parties present in this Court, shall appear before the Prant Officer, Gandhinagar on 11/5/2007. The parties who are not present in this Court, should be issued appropriate notices by the Prant Officer and after serving them, the Prant Officer would proceed in the matter.

15.Private respondents would also be entitled to submit their reply and raise all the pleadings which are available to them either on facts or under the law, they would also be entitled to lead evidence in reply to and to rebut the evidence of the petitioner.

16. Within a period of four months from the date of service of the notice upon the unserved respondents, the Prant Officer, Gandhinagar shall finally dispose of the matter and shall inform this Court.

17. The petition to the extent indicated above, with the limitations so fixed, is allowed. Rule is made absolute accordingly. No costs.

(R.S. GARG, J.)

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